

55. *SprintCom's 10 MHz of PCS spectrum in Anchorage.* MTA Wireless asserts that 10 MHz of PCS spectrum in the Anchorage market held by SprintCom, a subsidiary of Sprint Nextel, should be attributed to GCI when the Commission considers spectrum aggregation.¹⁷⁸ MTA Wireless bases its argument on its and ACS Wireless's joint contention that GCI will be acquiring control of Alaska DigiTel under the proposed transaction, and that Alaska DigiTel currently is providing [REDACTED].¹⁷⁹ Both argue [REDACTED].¹⁸⁰ [REDACTED]¹⁸¹ [REDACTED].¹⁸² [REDACTED].¹⁸³

56. The Applicants argue that the Commission should reject MTA Wireless's and ACS Wireless's arguments that are based upon the *Roaming Agreement* and the *Service Agreement* between Sprint Nextel and Alaska DigiTel. The Applicants contend that MTA Wireless even concedes that the *Service Agreement* expires in December 2006 and that notice has been given that this agreement will not be renewed. Therefore, the Applicants reason that MTA Wireless's and ACS Wireless's contentions amount to unsupported speculation that these agreements would be harmful to competition.¹⁸⁴

57. After review of the record, including the *Roaming Agreement* and the *Service Agreement*, we do not find evidence that there will be an ongoing relationship between Sprint Nextel and Alaska DigiTel that would result in competitive harm. Furthermore, the provisions of the [REDACTED], and therefore we conclude that, post-transaction, GCI [REDACTED].¹⁸⁵ [REDACTED]¹⁸⁶ [REDACTED].¹⁸⁷

58. *Conclusion.* In sum, for purposes of analyzing spectrum aggregation in this transaction,

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spectrum into account in evaluating the spectrum aggregation issues related to this proposed transaction when we attributed all of the leased spectrum to GCI. See paras.44-45, *supra*.

¹⁷⁸ MTA Wireless August 2, 2006 Comments at 4. SprintCom holds the 10 MHz D-block PCS license in BTA014 Anchorage, Alaska.

¹⁷⁹ ACS Wireless July 21, 2006 Comments/Petition at 6; ACS Wireless December 4, 2006 Comments at 2. ACS Wireless and MTA Wireless argue that the Commission should request the Applicants to submit any agreements it has with Sprint Nextel concerning the use by Sprint Nextel of Alaska DigiTel's facilities in Alaska as well as any other cooperative arrangements between or among the parties for the provision of mobile telephony services. See *id.* at 14; MTA Wireless August 2, 2006 Comments at 4. In the *Agreement Between Applicants, MTA Wireless, and ACS Wireless* Alaska DigiTel agreed to make "commercially reasonable efforts" to obtain SprintCom and its affiliate's consent to provide MTA Wireless and ACS Wireless counsel with the "Sprint Agreements." See *Agreement Between Applicants, MTA Wireless, and ACS Wireless* at 2. Alaska DigiTel provided the [REDACTED]. See MTA Wireless September 6, 2006 Comments at 25; ACS Wireless September 6, 2006 Comments at 17-18 n.58. On October 10, 2006, Alaska DigiTel filed a letter stating that they had provided Wireless Telecommunications Bureau staff with copies of the Sprint-Alaska DigiTel Roaming Agreement and Service Agreement. See Sprint Agreement Letter.

¹⁸⁰ ACS Wireless July 21, 2006 Comments/Petition at 6; MTA Wireless August 2, 2006 Comments at 4.

¹⁸¹ The *Service Agreement* [REDACTED].

¹⁸² MTA Wireless September 6, 2006 Comments at 27; ACS Wireless September 6, 2006 Comments at 17-18 n.58.

¹⁸³ MTA Wireless September 6, 2006 Comments at 27-28.

¹⁸⁴ Applicants September 13, 2006 Joint Response at 26-27.

¹⁸⁵ [REDACTED].

¹⁸⁶ [REDACTED].

¹⁸⁷ [REDACTED].

we will attribute 60 MHz of spectrum to GCI throughout the state of Alaska, except for St. Paul Island where we will attribute 80 MHz of spectrum to GCI.¹⁸⁸ Accordingly, consistent with Commission precedent relating to the initial screen pertaining to spectrum aggregation, we conclude that further analysis is only necessary with regard to St. Paul Island, where GCI would be attributed with more than 70 MHz of spectrum,¹⁸⁹ and no further analysis is necessary where less than 70 MHz of spectrum is attributed to the entity that would result from the proposed transaction.¹⁹⁰ In a subsequent subsection, we go on to examine other horizontal effects that arise from the structure of the particular transaction.¹⁹¹

59. As for St. Paul Island, after further analysis we do not find that the aggregation of 80 MHz of spectrum by GCI will result in undue competitive harm. First, we note that post-transaction, there would be sufficient spectrum available for rival carriers to deploy mobile telephony service on St. Paul Island. Currently, Bristol Bay Cellular holds the 25 MHz B-block cellular license, Jasper Wireless, Inc., holds 5 MHz of the A-block cellular license, Dobson holds 30 MHz of PCS spectrum, ACS Wireless and Lewis and Clark each hold 10 MHz of PCS spectrum, and Sprint Nextel holds approximately 14 MHz of PCS and SMR spectrum. Therefore, we find that there is sufficient spectrum for other carriers to provide facilities-based service on St. Paul Island.

60. In conclusion, after examining the potential concerns that might arise from the spectrum aggregation that would result from this proposed transaction, we determine not to impose any conditions requiring the GCI to divest any of its spectrum holdings throughout Alaska or on St. Paul Island.

b. Market Concentration

61. For purposes of examining subscriber-based market concentration for the relevant geographic markets that are affected by the proposed GCI-Alaska DigiTel-Denali transaction, we calculated the HHI and the change in HHI that would result from the proposed transaction, consistent with the Commission's practice in its recent orders.¹⁹² In calculating HHIs and the change in the HHIs, we analyzed NRUF data¹⁹³ using two sets of geographic areas, Component Economic Areas ("CEAs")¹⁹⁴

¹⁸⁸ Application Exhibit 1 at 5.

¹⁸⁹ See *DoCoMo-Guam Cellular Order*, FCC 06-167 at 17-18 ¶¶ 23-24; *ALLTEL-Midwest Order*, FCC 06-146 at 22 ¶ 39; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13074 ¶ 49; *Cingular-AT&T Wireless Order*, 20 FCC Rcd at 21568-69 ¶ 109.

¹⁹⁰ See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13994 ¶ 65 (although 70 MHz represents a little more than one-third of the total bandwidth available for mobile telephony today, a market may contain more than three viable competitors even where one entity controls this amount of spectrum because many carriers are competing successfully with less bandwidth); *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13074 ¶ 49; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568-69 ¶ 109.

¹⁹¹ See Section IV.B.3(b), *infra*.

¹⁹² See *DoCoMo-Guam Cellular Order*, FCC 06-167, at 18 ¶ 24; *ALLTEL-Midwest Order*, FCC 06-146 at 21 ¶ 36; *Sprint-Nextel Order*, 20 FCC Rcd at 13993-94 ¶ 63; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073 ¶ 46; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568 ¶ 106.

¹⁹³ These data indicate the number of assigned phone numbers that a wireless carrier has in a particular wireline rate center. Rate centers are geographic areas used by local exchange carriers for a variety of reasons, including the determination of toll rates. See HARRY NEWTON, NEWTON'S TELECOM DICTIONARY: 19TH EXPANDED & UPDATED EDITION 660 (July 2003). All mobile wireless carriers must report to the FCC the quantity of their phone numbers that have been assigned to end users, thereby permitting the Commission to calculate the total number of mobile subscribers. For purposes of geographical analysis, the rate center data can be associated with a geographic point, (continued....)

and Cellular Market Areas ("CMAs").¹⁹⁵ As discussed in the *ALLTEL-Western Wireless Order* and *Cingular-AT&T Wireless Order*, both geographic areas are consistent with the local market definition the Commission has applied in these recent orders and each brings a different perspective to the analysis.¹⁹⁶ We conclude from our analysis that GCI, as a reseller, is not an independent competitor, and therefore the change in the HHI for all relevant geographic markets would be zero.¹⁹⁷

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and all of those points that fall within a county boundary can be aggregated together and associated with much larger geographic areas based on counties.

¹⁹⁴ CEAs are defined by the Bureau of Economic Analysis ("BEA"), and are composed of a single economic node and surrounding counties that are economically related to the node. There are 348 CEAs in the 50 states and the District of Columbia. Of the 3,141 U.S. counties, 2,267 are non-nodal counties that are assigned to a CEA based first on county-to-county commuting flows from the 1990 Census and second on locations of the most widely read regional newspapers. Three quarters of non-nodal counties were assigned based on commuting patterns. See Kenneth P. Johnson, *Redefinition of the BEA Economic Areas*, SURV. OF CURRENT BUS., Feb. 1995, at 75-81. In November 2004, the Bureau of Economic Analysis updated definitions for CEAs. The total number of CEAs decreased from 348 to 344. Non-nodal county assignment continued to be based on county-to-county commuting flows and locations of the most widely read regional newspapers. See Kenneth P. Johnson & John R. Kort, *2004 Redefinition of the BEA Economic Areas*, SURV. OF CURRENT BUS., Nov. 2004 at 68-71. For purposes of this transaction, we did not adopt the new CEA definitions.

¹⁹⁵ See *DoCoMo-Guam Cellular Order*, FCC 06-167 at 18 ¶ 24, n.110; *ALLTEL-Midwest Order*, FCC 06-146 at 21 ¶ 35; *Sprint-Nextel Order*, 20 FCC Rcd at 13993 ¶ 63; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13072 ¶ 44; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567 ¶ 104. CMAs are the regions originally used by the Commission for issuing cellular licenses. There are 734 CMAs, made up of 305 Metropolitan Statistical Areas, 428 Rural Service Areas, and a market for the Gulf of Mexico. See *Eleventh Competition Report*, FCC 06-142 at 28 ¶ 62. RSAs are regions defined by the Commission for the purpose of issuing spectrum licenses. See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, WT Docket No. 05-71, *Tenth Competition Report*, 20 FCC Rcd 15908, 15935 ¶ 70 n.145.

¹⁹⁶ *ALLTEL-Midwest Order*, FCC 06-146 at 21 ¶ 35; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13072 ¶ 45; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567 ¶ 105. CEAs were designed to represent consumers' patterns of normal travel for personal and employment reasons and should replicate areas within which groups of consumers would be expected to shop for wireless service. In addition, CEAs generally constitute areas within which any service providers present would have an incentive to provide relatively ubiquitous service. See Kenneth P. Johnson, *Redefinition of the BEA Economic Areas*, SURV. OF CURRENT BUS., Feb. 1995, at 75; *ALLTEL-Midwest Order*, FCC 06-146 at 21 ¶ 35; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13072 ¶ 45; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567 ¶ 105. CMAs, in turn, are the areas in which the Commission initially granted licenses for cellular service. Although license partitioning has altered this initial licensing structure in many areas, CMAs continue to serve as reasonable areas for determining the number of competitors from which consumers may choose, because the Commission's licensing programs, to a large extent, have shaped the mobile telephony services market by defining the initial areas where carriers were able to provide facilities-based service. See 47 C.F.R. § 22.909; *ALLTEL-Midwest Order*, FCC 06-146 at 21 ¶ 35; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073 ¶ 45; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568 ¶ 105. As CEAs are derived from factors related to consumer demand for mobile telephony services and CMAs reflect to some extent the initial supply of mobile telephony services, we have found that they are useful cross-checks on each other and together help ensure that our analysis identifies all local areas that require more detailed analysis. See *ALLTEL-Midwest Order*, FCC 06-146 at 21 ¶ 35; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073 ¶ 45; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568 ¶ 105.

¹⁹⁷ See Section IV.B.1(d), *supra*.

62. MTA Wireless and ACS Wireless both argue that there currently are four competitors in the Anchorage market – ACS Wireless, Alaska DigiTel, Dobson, and GCI (as a reseller) – and that this transaction would result in a reduction of actual competitors from four to three, resulting in competitive harm.¹⁹⁸ MTA Wireless and ACS Wireless also argue [REDACTED].¹⁹⁹

63. ACS Wireless analyzes the impact of this proposed transaction on market concentration based on the assumption that [REDACTED], ACS Wireless calculates the HHI [REDACTED]. ACS Wireless concludes that these estimates demonstrate a significant potential for anticompetitive effects.²⁰⁰

64. The Applicants argue that, both pre- and post-transaction, [REDACTED].²⁰¹

65. As discussed above, for purposes of calculating our initial subscriber-based market concentration measures, we have already concluded that we do not consider GCI to be a facilities-based market participant.²⁰² Accordingly, we do not find that there is a loss of an actual, independent competitor in the market as a result of this transaction, and we conclude that the number of actual, independent competitors in the Anchorage market, both pre- and post- transaction, is three. Because we do not consider GCI to be an independent competitor in the market prior to the transaction, we do not accept ACS Wireless's estimates of the HHI and change in HHI that would result from this transaction, and therefore we are not persuaded by ACS Wireless's conclusion that these estimates demonstrate a significant potential for anticompetitive effects. Instead, we find that there is no change in the HHI in any local market for mobile telephony services as a result of this transaction.

66. Although the various contractual arrangements between GCI and Dobson do not result in spectrum concentration or HHI change figures that exceed our thresholds, MTA Wireless and ACS Wireless have raised questions about the totality of the horizontal relationships that would exist in the relevant Alaskan markets if this transaction was completed. To address the concerns, we conduct additional, in-depth analysis of the likely horizontal effects of the proposed transaction in the analysis below.

3. Horizontal Effects

67. In their various pleadings (discussed above), MTA Wireless and ACS Wireless generally assert that the GCI-Alaska DigiTel-Denali transaction is likely to have adverse effects on competition in Alaska. Therefore, this section examines in more detail how the transaction could affect competitive behavior in markets in Alaska. As discussed in previous orders, competition may be harmed either through unilateral actions by the combined entity or through coordinated interaction among firms competing in the relevant market.²⁰³

¹⁹⁸ MTA Wireless Petition to Deny at 5-6; MTA Wireless December 4, 2006 Comments at 4.

¹⁹⁹ MTA Wireless August 2, 2006 Comments at [REDACTED]; MTA Wireless December 4, 2006 Comments at [REDACTED]; ACS Wireless December 4, 2006 Comments at [REDACTED]. For discussion of GCI-Dobson relationship, see paras. 55-57, *supra*. For discussion of the Alaska DigiTel and Sprint Nextel relationship, see paras.50-54, *supra*.

²⁰⁰ ACS Wireless September 6, 2006 Comments at 20-21, Exhibit B; Declaration of Robert Doucette filed on behalf of ACS Wireless, Inc. (Sept. 6, 2006).

²⁰¹ Applicants September 13, 2006 Joint Response at 20-22.

²⁰² See Section IV.B.1(d), *supra*.

²⁰³ DOJ/FTC Merger Guidelines § 2.

68. Unilateral effects occur when the combined firm finds that, as a result of the transaction, it is now profitable to alter its behavior in an anticompetitive manner.²⁰⁴ Examples of unilateral effects include the ability of the combined firm to raise its price or reduce the features it includes in a given service plan it supplies. Coordinated effects occur when the remaining firms in the market, recognizing their interdependence, take actions “that are profitable for each of them only as a result of the accommodating reactions of others.”²⁰⁵ Examples of coordinated effects include explicit collusion, tacit collusion, and price leadership. Because coordinated effects may be more likely if there are fewer firms in a market, horizontal transactions may significantly increase the likelihood of coordinated effects by reducing the number of firms in the market. In previous merger orders, we discussed our analysis for potential unilateral effects and coordinated interaction in the mobile telephony services market extensively,²⁰⁶ and we do not find it necessary to repeat those discussions here. We limit our discussion of potential unilateral and coordinated interaction effects to those that appear to be raised by the

²⁰⁴ DOJ/FTC Merger Guidelines § 2.2. The term “unilateral” refers to the method used by firms to determine strategy, not to the fact that the merged entity would be the only firm to change its strategy. The term unilateral is used to indicate that strategies are determined unilaterally by each of the firms in the market and not by explicit or tacit collusion. Other firms in the market may find it profitable to alter their behavior as a result of the merger-induced change in market structure by, for example, repositioning their products, changing capacity, or changing their own prices. These reactions can alter the total effect on the market and must be taken into account when evaluating potential unilateral effects. See *Sprint-Nextel Order*, 20 FCC Rcd at 14001 n.199; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13076 n.155; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 n.341.

²⁰⁵ DOJ/FTC Merger Guidelines § 2.1. See also W. KIP VISCUSI, JOHN M. VERNON & JOSEPH E. HARRINGTON, JR., *ECONOMICS OF REGULATION AND ANTITRUST* 107 (2000); DOUGLAS GREER, *INDUSTRIAL ORGANIZATION AND PUBLIC POLICY* 269 (1992).

²⁰⁶ For unilateral effects, our analyses have included the following aspects: (1) product differentiation and substitutability (see *Sprint-Nextel Order*, 20 FCC Rcd at 14002-07 ¶¶ 94-107; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13077-79 ¶¶ 59-64; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21571-75 ¶¶ 119-133); (2) network effects (see *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13082-83 ¶¶ 75-77; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21578 ¶¶ 142-145); (3) marginal cost reductions (see *Sprint-Nextel Order*, 20 FCC Rcd at 14009 ¶ 115). *Sprint-Nextel Order*, 20 FCC Rcd at 13087 ¶¶ 91-92; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21584-85 ¶¶ 160-162); (4) competitive response by rivals (see *ALLTEL-Midwest Order*, FCC 06-146 at 26-27 ¶¶ 50-52; *Sprint-Nextel Order*, 20 FCC Rcd at 14007-09 ¶¶ 108-114; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13079-81 ¶¶ 65-72; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21575-76 ¶¶ 134-137); (5) spectrum and advanced wireless services (see *ALLTEL-Midwest Order*, FCC 06-146 at 27 ¶¶ 53-54; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13819-21 ¶¶ 73-74; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21577-78 ¶¶ 138-141); (6) market share (see *ALLTEL-Midwest Order*, FCC 06-146 at 27-28 ¶¶ 55-57; *Sprint-Nextel Order*, 20 FCC Rcd at 14001 ¶ 92; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13076-77 ¶ 58; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570-71 ¶¶ 117-118); and (7) penetration (see *ALLTEL-Midwest Order*, FCC 06-146 at 28-29 ¶¶ 58-59; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13083-85 ¶¶ 78-83; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21578-80 ¶¶ 146-149); . For coordinated interaction, our analyses have included: (1) firm and product homogeneity (see *Sprint-Nextel Order*, 20 FCC Rcd at 13997 ¶¶ 75-78; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13087 ¶ 90; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21582-84 ¶¶ 156-159); (2) existing cooperative ventures (see *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21585 ¶ 163); (3) number of firms (see *Sprint-Nextel Order*, 20 FCC Rcd at 13998-99 ¶¶ 81-83); (4) technology development (see *Sprint-Nextel Order*, 20 FCC Rcd at 13999-14000 ¶¶ 84-88); (5) response of rivals (see *Sprint-Nextel Order*, 20 FCC Rcd at 13996 ¶¶ 73-74; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13086 ¶ 89; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21581-82 ¶¶ 154-155); and (7) presence of mavericks (see *Sprint-Nextel Order*, 20 FCC Rcd at 13997-98 ¶¶ 79-80; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13087 ¶¶ 91-92; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21584-85 ¶¶ 160-162).

transaction before us.

a. Unilateral Effects

69. Both MTA Wireless and ACS Wireless contend that the proposed transaction would create the potential for unilateral effects. As the Commission has previously discussed, unilateral effects arise when the merged firm finds it profitable to alter its behavior following the transaction by “elevating price and suppressing output.”²⁰⁷ As explained in previous Commission orders, in the case of mobile telephony, this might take the form of delaying improvements in service quality or adversely adjusting plan features without changing the plan price.²⁰⁸ Incentives for such unilateral competitive actions vary with the nature of competition in the relevant markets. After reviewing the record, we conclude that this transaction is unlikely to result in adverse unilateral effects.

70. MTA Wireless argues that this transaction should be evaluated for potential unilateral effects.²⁰⁹ Further, MTA Wireless claims that the *Resale Agreement* may indicate that post-transaction, GCI would have the ability to engage in unilateral anti-competitive actions.²¹⁰ Also, ACS Wireless argues that, post-transaction, GCI would have the ability and incentive to engage in anticompetitive actions, such as raising prices or reducing output due to its cooperative arrangements with other carriers in Alaska. Further, ACS Wireless claims that Alaska DigiTel today prevents GCI from unilaterally raising prices, reducing service quality, or restricting output in an anticompetitive manner, and as a result of this transaction Alaska DigiTel would no longer be in a position to be a disciplining force in the market.²¹¹

71. MTA Wireless also claims that GCI should be considered a potential competitor in the Anchorage market because it holds PCS spectrum but does not provide facilities-based mobile telephony service. Therefore, MTA Wireless argues that this transaction will result in a loss of two independent, potential competitors in the Anchorage market (GCI and Denali).²¹² However, ACS Wireless argues that it is unlikely that a new facilities-based mobile telephony carrier will enter the Alaskan market to constrain GCI because of high infrastructure costs and population dispersion.²¹³

72. The Applicants argue that unilateral effects are unlikely to occur as a result of this transaction. The Applicants contend that in Anchorage the combined GCI-Alaska DigiTel entity would have less than a 20 percent market share, and that in the Matanuska-Sustina market the combined share would be approximately 23 percent. The combined share in both of these markets is well below the DOJ threshold of 35 percent for unilateral effects. Further, the Applicants argue that the market share for the

²⁰⁷ See *ALLTEL-Midwest Order*, FCC 06-146 at 25 ¶ 47; *Sprint-Nextel Order*, 20 FCC Rcd at 14001 ¶ 91; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13075 ¶ 54; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 115; *DOJ/FTC Merger Guidelines* § 2.2.

²⁰⁸ See *ALLTEL-Midwest Order*, FCC 06-146 at 25 ¶ 47; *Sprint-Nextel Order*, 20 FCC Rcd at 14001 n.199; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13075-76 ¶ 54; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 115.

²⁰⁹ MTA Wireless March 13, 2006 Reply at 11.

²¹⁰ MTA Wireless September 6, 2006 Comments at 24.

²¹¹ ACS Wireless September 6, 2006 Comments at 13, 18.

²¹² MTA Wireless Petition to Deny at 6.

²¹³ ACS Wireless September 6, 2006 Comments at 19-20.

combined firm is low, in part, because the transaction does not involve cellular spectrum. The Applicants claim that cellular licensees in Alaska have a competitive advantage over PCS licensees in Alaska because cellular frequencies have superior propagation characteristics in areas with rugged terrain and sparse and dispersed population.²¹⁴

73. Further, the Applicants argue that there is not a loss of two potential competitors as a result of this transaction. First, the Applicants claim that Denali and Alaska DigiTel today are commonly-controlled affiliates. The Applicants argue that Denali originally obtained its 15 MHz license as a result of a *pro forma* assignment disaggregating 15 MHz from Alaska DigiTel's 30 MHz A-block PCS license. However, the Applicants do not refute MTA Wireless's claim that GCI is a potential entrant, but argue that GCI will not be lost as a potential competitor because GCI will not control Alaska DigiTel.²¹⁵

74. We find that it is unlikely that this transaction will result in unilateral effects in any local mobile telephony market in Alaska and that a loss of a potential competitor is unlikely to result in undue competitive harm. For purposes of our competitive review we find that Alaska DigiTel and Denali are under the common control of William Yandell,²¹⁶ and therefore we do not consider Denali a potential entrant. We do find that GCI is a potential facilities-based entrant into the Anchorage mobile telephony market as well as in other markets in the state of Alaska.

75. We conclude, however, that even the loss of GCI as a potential competitor would not result in competitive harms in the Anchorage market or in any other market in the state of Alaska. First, there are three facilities-based carriers in the Anchorage market, and post-transaction, there would be two remaining potential entrants in the market, Sprint Nextel and Lewis and Clark Communications holding the PCS D and F blocks, respectively.²¹⁷ Further, Alaska Native Wireless, Sprint Nextel, and Lewis and Clark hold other PCS licenses that cover other local markets in Alaska. These licensees currently do not provide facilities-based service in Alaska and therefore are potential entrants. Second, the ability of a potential competitor in disciplining the market in the near term is limited. In order for a potential entrant to mitigate any anticompetitive effects entry needs to occur in a timely and sufficient manner.²¹⁸ In previous orders, the Commission has considered other licensed firms' abilities to reposition themselves if the merged entity exercises market power.²¹⁹ There is no evidence presented in the record that indicates that, absent this transaction, GCI has plans for the near-term future to enter the market as a facilities-based mobile telephony provider.

76. After reviewing the agreements submitted into the record, we conclude that GCI's and Alaska DigiTel's relationships with other carriers is unlikely, post-transaction, to provide either GCI or

²¹⁴ Applicants September 13, 2006 Joint Response at 22 (redacted version). See also *DOJ/FTC Merger Guidelines* at Section 2.211.

²¹⁵ Applicants March 1, 2006 Joint Opposition at 7-9.

²¹⁶ Pro Forma Application at Exhibit 1.

²¹⁷ MTA Wireless Petition to Deny at 6; Declaration of Carolyn Hanson filed on behalf of Matanuska-Kenai, Inc., d/b/a MTA Wireless (Feb. 15, 2006) ("Hanson February 15, 2006 Declaration") at 2 ¶ 6.

²¹⁸ *DOJ/FTC Merger Guidelines* at § 3.

²¹⁹ See *ALLTEL-Midwest Order*, FCC 06-146 at 26-27 ¶¶ 50-52; *Sprint-Nextel Order*, 20 FCC Rcd at 14007-10 ¶¶ 108-114, 118; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13079-81 ¶¶ 65-72, 13094-5 ¶¶ 112-113; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21575-6 ¶¶ 134-137, 21593-4 ¶¶ 185-186. Also, the *ALLTEL-Western Wireless Order* concluded that generally new entrants are unable to enter in a timely or sufficient manner to discipline the market. *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085 ¶ 84.

Alaska DigiTel with the incentive or ability to raise prices, reduce service quality, or restrict output in the mobile telephony market. Post-transaction, GCI will continue to resell [REDACTED].²²⁰ Therefore post-transaction, consumers will continue to choose from three independent actual competitors – Alaska DigiTel, ACS Wireless, and Dobson – as well as GCI as a reseller. Further, in each of the four CMAs in Alaska, [REDACTED].²²¹ Therefore, it is unlikely that, post-transaction, GCI or Alaska DigiTel would be able to successfully unilaterally raise price or reduce service in any relevant market in Alaska.

b. Coordinated Effects

77. We also examined the transaction for possible coordinated effects. As discussed in previous orders, in markets where only a few firms account for most of the sales of a product, those firms may be able to exercise market power by either explicitly or tacitly coordinating their actions.²²² Accordingly, one way in which a transaction or merger may create or enhance market power or facilitate its exercise is by making such coordinated interaction among firms more likely, more successful, or more complete.²²³ Successful coordination depends on two key factors. The first is the ability to reach terms that are profitable for each of the firms involved, and the second is the ability to detect and punish deviations that would undermine the coordinated interaction.²²⁴

78. MTA Wireless argues that this transaction requires an analysis of potential coordinated interaction because there is a loss of a competitor in the Anchorage market²²⁵ and the relationship between Dobson and GCI meets the Commission's test for explicit and tacit collusion.²²⁶ Further, MTA Wireless and ACS Wireless contend that the *Lease Agreements* and the *Resale Agreement* reflect an extraordinary degree of cooperation between GCI and Dobson.²²⁷ In particular, they argue that the [REDACTED].²²⁸ [REDACTED].²²⁹ [REDACTED].²³⁰ [REDACTED].²³¹

79. MTA Wireless also argues that the *Lease Agreements*, the *Resale Agreement*, and the

²²⁰ See *Resale Agreement Art. I, 2(a), 3(b)(iv)*.

²²¹ [REDACTED].

²²² See *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 29 ¶ 60; *Sprint-Nextel Order*, 20 FCC Rcd at 13995 ¶ 69; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085 ¶ 85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶¶ 150; *DOJ/FTC Merger Guidelines* § 0.1.

²²³ See *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 29 ¶ 60; *Sprint-Nextel Order*, 20 FCC Rcd at 13995 ¶ 69; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085 ¶ 85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 150.

²²⁴ See *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 29 ¶ 60; *Sprint-Nextel Order*, 20 FCC Rcd at 13995 ¶ 69; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085 ¶ 85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 151; *DOJ/FTC Merger Guidelines* § 2.11.

²²⁵ MTA Wireless Petition to Deny at 14; MTA Wireless March 13, 2006 Reply at 11.

²²⁶ MTA Wireless July 24, 2006 Comments at 18-19.

²²⁷ MTA Wireless July 24, 2006 Comments at 9-10, 17-18; ACS Wireless September 6, 2006 Comments at 8.

²²⁸ [REDACTED].

²²⁹ [REDACTED] see also paras. 90, *infra*.

²³⁰ [REDACTED].

²³¹ [REDACTED].

Letter of Intent show the extent of cooperation between GCI and Dobson, and concludes that the strategic relationship between Dobson and GCI represents coordinated interaction of direct competitors.²³²
[REDACTED].²³³

80. [REDACTED].²³⁴ [REDACTED].²³⁵ ACS Wireless contends that GCI's 78 percent ownership interest in Alaska DigiTel gives GCI incentives to minimize direct product or service competition wherever possible. Further, ACS Wireless claims that it would not be in GCI's interest to cannibalize its own wireless service, especially its bundled service offerings, because GCI needs to offer its own wireless product in its bundled services to compete effectively. Therefore, according to ACS Wireless, if GCI, through its investment, does strengthen Alaska DigiTel, it is likely to do so in a coordinated manner.²³⁶

81. [REDACTED].²³⁷ [REDACTED]. Finally, the Applicants argue that neither MTA Wireless nor ACS Wireless has provided any evidence that coordinated interaction has or would take place as a result of this transaction.²³⁸

82. As a result of our analysis, we do not find that there would be an increased likelihood of coordinated interaction due to a loss of an actual, facilities-based service provider as a result of this transaction.²³⁹ Further, we find that the existing relationship between Dobson and GCI is not a result of this transaction, and that allegations raised by MTA Wireless and ACS Wireless are not transaction specific. However, we find that coordinated interaction would be more likely and more successful because of certain provisions of the *Resale Agreement* combined with GCI's seat on Alaska DigiTel's Board of Managers.

83. From our review of the *Resale Agreement*, certain provisions indicate that GCI's investment in Alaska DigiTel/Denali may provide the ability and incentive for coordinated interaction. [REDACTED].²⁴⁰ [REDACTED].²⁴¹ [REDACTED].²⁴² [REDACTED].²⁴³

²³² MTA Wireless July 24, 2006 Comments at 14, 17; MTA Wireless September 25, 2006 Comments at 1-5. MTA Wireless and ACS Wireless argue that the *Letter of Intent* further supports their claims of a close coordinated relationship between Dobson and GCI. See MTA Wireless September 25, 2006 Comments at 1-5; ACS Wireless September 27, 2006 Comments at 2-4. See also paras. 50-54, *supra*.

²³³ MTA Wireless July 24, 2006 Comments at 14-15.

²³⁴ ACS Wireless September 6, 2006 Comments at 13.

²³⁵ ACS Wireless July 21, 2006 Comments/Petition at 8-9; ACS Wireless September 6, 2006 Comments at 35.

²³⁶ ACS Wireless July 21, 2006 Comments/Petition at 8-9.

²³⁷ [REDACTED].

²³⁸ Applicants September 13, 2006 Joint Response at 22 (redacted version)(citing the *Sprint-Nextel Order*, 20 FCC Rcd at 13999 ¶ 85).

²³⁹ See paras. 34-35, 65, *supra*.

²⁴⁰ [REDACTED].

²⁴¹ [REDACTED].

²⁴² [REDACTED].

²⁴³ [REDACTED]

84. [REDACTED].²⁴⁴ [REDACTED].²⁴⁵

85. Whether coordinated interaction would be more likely or successful is directly affected by the proposed structure of GCI/Alaska DigiTel/Denali. We have reviewed the GCI/Alaska DigiTel/Denali *Operating Agreement* and *Management Agreement* to determine the extent of involvement by GCI in the proposed management of Alaska DigiTel and whether this involvement would provide a conduit for information concerning Dobson's future prices and service plans to be passed on to Alaska DigiTel. Our review indicates that this transaction would increase the potential for coordinated interaction. Due to the information that GCI receives about Dobson under the *Resale Agreement*, along with its position on Alaska DigiTel's Board of Managers, it is possible for market-sensitive information to be conveyed between Alaska DigiTel, GCI, and Dobson, which could result in coordinated interaction among these service providers. Thus, we impose conditions to eliminate concerns that this transaction could increase the potential for coordinated interaction.²⁴⁶

4. Other Considerations

86. In this section, we consider the potential vertical or other non-horizontal harms of the proposed transaction. A vertical merger is one that occurs between firms at different but adjacent levels of production or distribution of a good or service.²⁴⁷ Several potential non-horizontal harms were raised in the record. These potential non-horizontal harms include spectrum warehousing, roaming, tying of wholesale transport over GCI's submarine cables with roaming, and predatory pricing, and each is analyzed below.

a. Spectrum Warehousing

87. MTA Wireless and ACS Wireless contend that GCI is "warehousing" the spectrum associated with its broadband PCS license because GCI itself is only using that spectrum to provide fixed wireless service.²⁴⁸ [REDACTED].²⁴⁹ [REDACTED].²⁵⁰ [REDACTED].²⁵¹ [REDACTED].²⁵² ACS Wireless requests that the Commission require some divestiture of spectrum to reduce post-transaction spectrum concentration.²⁵³

88. In response, the Applicants assert that the Commission's rules do not require that a

²⁴⁴ [REDACTED].

²⁴⁵ [REDACTED].

²⁴⁶ See discussion Part V, *supra*.

²⁴⁷ See *Brown Shoe Co. v. United States*, 370 U.S. 294 (1962) ("Economic arrangements between companies standing in a supplier-customer relationship are characterized as 'vertical.'").

²⁴⁸ MTA Wireless Petition to Deny at 12-15; MTA Wireless March 13, 2006 Reply at 12; ACS Wireless September 6, 2006 Comments at 18-20. The Alaska Telephone Association alleges that GCI desires to "hoard statewide, wireless spectrum in Alaska by acquiring a 'non-controlling' 78% ownership of Alaska DigiTel." Alaska Telephone Association Comments at 2.

²⁴⁹ [REDACTED].

²⁵⁰ [REDACTED].

²⁵¹ [REDACTED].

²⁵² [REDACTED].

²⁵³ ACS Wireless September 6, 2006 Comments at 37.

broadband PCS license be used to provide mobile telephony services, and expressly permit the use of that license to provide fixed wireless service.²⁵⁴ [REDACTED].²⁵⁵

89. We find that the record and the Commission's rules do not support the relief requested by MTA Wireless and ACS Wireless. With regard to allegations that GCI is warehousing its spectrum because it is providing fixed service, the Commission's broadband PCS service rules expressly permit the provision of fixed services on a co-primary basis with mobile services.²⁵⁶ In 1996, the Commission found that Commercial Mobile Radio Services ("CMRS") carriers should have this flexibility in order to provide innovative wireless services and to stimulate wireless competition in the local exchange market.²⁵⁷ The Commission also has determined that CMRS carriers could provide exclusively fixed services.²⁵⁸

90. The allegations regarding GCI's spectrum lease with Dobson similarly are not based on any violation of the Commission's buildout policies. The Commission's secondary markets rules expressly permit a licensee to rely on any buildout performed by its spectrum lessee in order to meet applicable construction requirements pertaining to the license.²⁵⁹ Finally, Commission records show that GCI filed in a timely manner its five-year and ten-year construction notifications, and that GCI has met the applicable construction requirements.²⁶⁰ Based on the filings before us, we believe that GCI was

²⁵⁴ Applicants March 13, 2006 Joint Opposition at 16.

²⁵⁵ [REDACTED].

²⁵⁶ Section 24.3 of the Commission's rules states: "PCS licensees may provide any mobile communications service on their assigned spectrum. Fixed services may be provided on a co-primary basis with mobile operations. Broadcasting as defined in the Communications Act is prohibited." 47 C.F.R. §24.3.

²⁵⁷ See Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, *Second Report and Order and Order on Reconsideration*, 15 FCC Rcd 14680, 14681 (2000) ("CMRS Flex Second R&O") (citing Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8965, 8977 ¶ 24 (1996)).

²⁵⁸ In this regard, the Commission has stated that, "[b]y not having any thresholds or ceilings on the relative levels of fixed or mobile services associated with the term 'co-primary,' the Commission allowed providers to choose to provide exclusively fixed services, exclusively mobile services, or any combination of the two." *CMRS Flex Second R&O*, 15 FCC Rcd at 14681 n.4.

²⁵⁹ See generally Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Report and Order*, 18 FCC Rcd 20604 (2003) ("*Secondary Markets First R&O*"), at 20653 ¶¶ 114-115 (spectrum manager leases), 20665 ¶ 146 (long-term *de facto* transfer leases); see also 47 CFR § 1.1920(d)(5)(i) (spectrum manager leases), 1.9030(d)(5)(i) (long-term *de facto* transfer leases). GCI and Dobson have entered into a long-term *de facto* transfer leasing arrangement. In establishing the spectrum leasing rules in 2003, the Commission expressly stated that "[w]e will allow licensees using [the long-term *de facto* transfer] leasing option to rely on the activities of their spectrum lessees for purposes of complying with the build-out requirements that are conditions of the license authorization." *Secondary Market First R&O*, 18 FCC Rcd at 20665 ¶ 147; see also 47 C.F.R. § 1.9030(d)(i) (rules pertaining to *de facto* transfer leasing arrangements provides that "[t]he licensee may attribute to itself the build-out or performance activities of its spectrum lessee(s) for purposes of complying with any applicable build-out or performance requirement").

²⁶⁰ For its five-year notification in June 2000, GCI reported that it had constructed a fixed wireless network in Anchorage, Alaska. See Notification of Construction of KNLF298 by GCI Communication Corporation, ULS File No. 0000175068 (filed June 23, 2000). This network consisted of three sites and covered over one-third of the population of MTA049-Alaska. For its ten-year construction notification in May 2005, GCI reported that it met its (continued....)

relying on the buildout by its spectrum lessee Dobson to meet the ten-year construction requirement.²⁶¹

b. Roaming

91. Roaming occurs when the subscriber of one CMRS provider travels beyond the service area of that provider and utilizes the facilities of another CMRS provider to place an outgoing call, to receive an incoming call, or to continue an in-progress call.²⁶² A subscriber may establish a roaming arrangement with a CMRS provider “manually” by personally entering into a contractual agreement with that provider for the right to roam on its network (e.g., giving the provider a credit card number to pay for roaming charges).²⁶³ In contrast, “automatic” roaming involves an agreement between two carriers and allows all of the subscribers of a carrier to make calls on the network of the other without taking any action beyond the making of the call.²⁶⁴ Thus, automatic roaming is more convenient for a subscriber than manual roaming and, as a practice, has become increasingly widespread.²⁶⁵

92. Section 20.12 of the Commission’s rules imposes on CMRS providers the obligation to provide manual roaming arrangements to the subscriber of another provider on request.²⁶⁶ This rule does not impose any obligation to provide automatic roaming arrangements.²⁶⁷ The Commission is currently reviewing whether roaming requirements applicable to CMRS providers should be modified given the current state of the CMRS market.²⁶⁸

93. MTA Wireless, which provides service using a CMDA air interface, argues that it is important for regional carriers to have access to an array of mobile telephony carriers in order to negotiate roaming agreements.²⁶⁹ Further, MTA Wireless argues that carriers with state-wide licenses, such as
(Continued from previous page) _____
buildout obligations based on a constructed GSM network that covered over two-thirds of the population of MTA049-Alaska. See Notification of Construction of KNL298 by GCI Communication Corporation ULS File No. 0002181339 (filed May 31, 2005). GCI’s ten-year notification does not specify whether it is providing a mobile or a fixed service, but its filing demonstrates a sufficient signal strength to serve two-thirds of the population in its licensed area regardless of whether the service is fixed or mobile.

²⁶¹ [REDACTED].

²⁶² See *DoCoMo-Guam Cellular Order*, FCC 06-167, at 22 ¶ 33; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13090 ¶ 101; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21586 ¶ 166; see also Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Service, WT Docket No. 05-265, 00-193, *Memorandum Opinion & Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 15047, 15048 ¶ 2 (2005) (“Roaming Notice”).

²⁶³ *Roaming Notice*, 20 FCC Rcd at 15049 ¶ 3.

²⁶⁴ *Id.*

²⁶⁵ *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21588-89 ¶ 174.

²⁶⁶ 47 C.F.R. § 20.12(c) provides: “Each carrier subject to this section must provide mobile radio service upon request to all subscribers in good standing to the services of any carrier subject to this section, including roamers, while such subscribers are located within any portion of the licensee’s licensed service area where facilities have been constructed and service to subscribers has commenced, if such subscribers are using mobile equipment that is technically compatible with the licensee’s base stations.”

²⁶⁷ *Id.*

²⁶⁸ *Roaming Notice*, 20 FCC Rcd at 15048 ¶ 2.

²⁶⁹ Hanson February 15, 2006 Declaration at 3 ¶ 10; Kenshalo March 13, 2006 Declaration at 4 ¶ 7; MTA Wireless August 2, 2006 Comments at 2-3.

GCI, can build out their networks to reduce roaming expenses and over time be in a position to refuse to negotiate roaming agreements with regional carriers.²⁷⁰ MTA Wireless claims that it has had difficulty in securing roaming agreements within Alaska as well as in the Lower 48, and that post-transaction the collaboration between Alaska DigiTel, GCI, and Dobson will further limit its ability to secure neutral roaming terms.²⁷¹ MTA Wireless concurs with ACS Wireless's contention that approval of the applications should be conditioned in a manner that prevents GCI from aggregating an overwhelming amount of spectrum in the Anchorage market.²⁷² MTA Wireless further adds that it would be reasonable for the Commission to require GCI to divest itself of the 15 MHz of PCS capacity previously leased to Denali and of GCI's own unused 20 MHz of statewide PCS spectrum that it has not leased to Dobson or any other party.²⁷³ Finally, MTA Wireless requests that the Commission condition its approval of this transaction on GCI-Alaska DigiTel providing data roaming services on request and on commercially reasonable, nondiscriminatory terms.²⁷⁴

94. The Commission in previous orders found that existing rules address many of these concerns.²⁷⁵ Our manual roaming rule requires other carriers to complete calls initiated by MTA Wireless's customers where MTA Wireless cannot because it has neither its own signal nor an automatic roaming agreement.²⁷⁶ In addition, we adopt as a condition to our grant in this order a reciprocal duty, *i.e.*, that Alaska DigiTel may not prevent its customers from reaching another carrier and completing their calls in these circumstances, unless specifically requested to do so by a subscriber.²⁷⁷ We decline to impose any additional roaming obligations upon the Applicants. We also note that if a roaming partner believes that Alaska DigiTel is charging unreasonable roaming rates, it can file a complaint with the Commission under section 208 of the Communications Act.²⁷⁸

c. Submarine Cable

95. Another issue raised by MTA Wireless and ACS Wireless concerns how GCI's

²⁷⁰ Hanson February 15, 2006 Declaration at 3 ¶ 9; Kenshalo March 13, 2006 Declaration at 3-4 ¶¶ 5, 7;

²⁷¹ Declaration of Richard Kenshalo filed on behalf of MTA Communications, Inc., d/b/a MTA Wireless (Aug. 2, 2006) ("Kenshalo August 2, 2006 Declaration") at 3 ¶ 6; MTA Wireless July 24, 2006 Comments at 20.

²⁷² MTA Wireless August 2, 2006 Comments at 10; ACS Wireless July 21, 2006 Comments/Petition at 15.

²⁷³ MTA Wireless August 2, 2006 Comments at 11; MTA Wireless December 4, 2006 Comments at 4. MTA Wireless argues that this capacity should be made available for lease or acquisition. MTA Wireless December 4, 2006 Comments at 5.

²⁷⁴ MTA Wireless December 4, 2006 Comments at 5.

²⁷⁵ *ALLTEL-Midwest Order*, FCC Rcd 06-146 at 38 ¶ 103; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 127; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13093 ¶ 108; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21592 ¶ 182.

²⁷⁶ See 47 C.F.R. § 20.12; see also *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 127; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13093 ¶ 108; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21592 ¶ 182.

²⁷⁷ See *ALLTEL-Midwest Order*, FCC Rcd 06-146 at 38 ¶ 103; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 127; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13093 ¶ 108; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21592 ¶ 182.

²⁷⁸ 47 U.S.C. § 208. See also *ALLTEL-Midwest Order*, FCC Rcd 06-146 at 38 ¶ 103; *Sprint-Nextel Order*, 20 FCC Rcd at 14012-13 ¶ 127; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13093 ¶ 108; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21592 ¶ 182.

ownership of two of the three submarine cables used for wholesale transport of communications to the Lower 48 States should affect review of the proposed transaction.

96. Specifically, GCI is the owner and submarine cable landing licensee for the Alaska United East and Alaska United West submarine cables.²⁷⁹ The cables land at or near Seward, Whittier, Valdez and Juneau, Alaska, Warrenton, Oregon, and Seattle, Washington, and use long-term leased capacity to connect GCI's network in Anchorage with the Seward cable landing station and to connect GCI's network in Seattle with the Warrenton cable landing station.²⁸⁰ A third fiber optic cable, the Alaska Northstar submarine cable, competes with GCI for traffic on the Alaska-Pacific Northwest route.²⁸¹ All three cables operate on a non-common carrier basis.²⁸² Fixed-Satellite Service providers also offer transponder capacity that may be used for services to, from and within Alaska.²⁸³

97. ACS Wireless and MTA Wireless claim that this transaction would provide GCI with the ability and incentive to tie²⁸⁴ its wholesale transport service between Alaska and the Lower 48 with

²⁷⁹ See *Alaska United East Order*, 12 FCC Rcd 18292, *Order on Review*, 16 FCC Rcd 4314; General Communication, Inc., File No. SCL-97-003A, Landing Points Notification, *Public Notice*, Report No. TEL-161-B (IB June 12, 1998); Alaska United Fiber System Partnership, File No. SCL-LIC-20020522-00047, Submarine Cable Landing License, *Public Notice*, Actions Taken Under Cable Landing License Act, 17 FCC Rcd 14780 (IB 2002) ("*Alaska United West Public Notice*") (authorizing Alaska United West as a non-common carrier cable); Alaska United Fiber System Partnership, File No. SCL-LPN-20030912-00026, Landing Points Notification, *Public Notice*, Report No. TEL-00716NS (IB Sept. 26, 2003). The two GCI cables operate in a ring configuration. See *Alaska United West Public Notice*, 17 FCC Rcd at 14781.

²⁸⁰ See GCI Form 10-K at 19.

²⁸¹ See GCI 10-K at 26. See also Alaska Telecom Ltd., LC, Application for a License to Land and Operate a Submarine Fiber Optic Cable between the Pacific Northwest United States and the State of Alaska, File No. SCL-94-004, *Cable Landing License*, 10 FCC Rcd 6072 (IB 1995) ("*Alaska Northstar Order*"); Alaska Northstar Communications, LLC, Application for a License to Land and Operate a Submarine Cable Fiber Optic Cable Extending between Two Cable Landing Points in South Central Alaska, *Cable Landing License*, 11 FCC Rcd 16842 (IB 1996) ("*Whittier-Valdez Order*"); Alaska Northstar Communications, LLC, Transferor, and WCI Cable, Inc., Transferee, Application for Modification of Submarine Cable Landing Licenses, File Nos. SCL-94-004-TC and SCL-96-002-TC, *Memorandum Opinion and Order*, 12 FCC Rcd 20330 (IB 1997); AMP Life Limited, Transferor, and Neptune Communications LLC, Transferee, File Nos. SCL-T/C-20020123-00002 and SCL-ASG-20020123-00003, Transfer of Control, *Public Notice*, Cable Landing Licenses Granted, 17 FCC Rcd 6053 (IB 2002); Northstar License Corporation, File No. SCL-T/C-20030130-00007, Transfer of Control, *Public Notice*, International Authorizations Granted, Report No. TEL-00646, 18 FCC Rcd 4524 (IB 2003). The cable lands at or near Whittier, Valdez, and Juneau, Alaska, and Nedonna Beach, Oregon.

²⁸² *Alaska United East Order*, 12 FCC Rcd at 18298 ¶ 21; *Alaska United West Public Notice*, 17 FCC Rcd at 14781; *Alaska Northstar Order*, 10 FCC Rcd at 6072-73 ¶ 6, *Whittier-Valdez Order*, 11 FCC Rcd at 16844-45 ¶ 9.

²⁸³ See, e.g., Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC, and PEOP PAS, LLC, Transferors, and Intelsat Holdings, Ltd., Transferees, Consolidated Application for Authority to Transfer Control of PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp., IB Docket No. 05-290, *Memorandum Opinion and Order*, FCC 06-85 (June 19, 2006), at ¶¶ 70 n.200, 71 n.203 (six Intelsat, eight PanAmSat, and ten SES Americom satellites serve, or soon will serve, Alaska for the provision of voice, data, broadband, and cable television services).

²⁸⁴ Tying occurs when a customer can buy a product or service only if another product or service in which the seller has an economic interest is also purchased. See DENNIS W. CARLTON & JEFFREY M. PERLOFF, *MODERN INDUSTRIAL ORGANIZATION* 247-51 (3rd ed. 1999) ("CARLTON & PERLOFF"); Northern Pacific Railway Co. et al. v. United States, 356 U.S. 1, 5-6 (1958). Even in the absence of an express requirement to buy both, tying may be (continued....)

roaming service in Alaska.²⁸⁵ In order to ameliorate this potential harm, ACS Wireless and MTA Wireless propose that the Commission change the status of GCI's submarine cables from private line to common carrier,²⁸⁶ and prohibit GCI from tying wholesale transport and roaming services.²⁸⁷

98. ACS Wireless and MTA Wireless contend that GCI's ownership of two of the three submarine fiber optic cables that connect Alaska to the Lower 48 gives GCI dominant market strength in the provision of wholesale transport services because construction of new submarine cables by other carriers is cost-prohibitive; and satellite technology is not an effective substitute for fiber-based transport because of latency and cost issues, especially for data transmissions.²⁸⁸ Further, ACS Wireless and MTA Wireless argue that GCI has a monopoly on redundant transport facilities to the Lower 48 required by certain customers, such as the banking industry and the military.²⁸⁹ ACS Wireless also argues that special access transport service is strategically important because of the growth in data, Internet and other private line traffic.²⁹⁰

99. ACS Wireless and MTA Wireless claim that GCI could use its control over Alaska DigiTel to restrict competition in the roaming market, in several ways.²⁹¹ First, GCI could offer Lower 48 carriers a "sweetheart deal" on roaming if the carriers use GCI for wholesale transport.²⁹² Further, GCI could anti-competitively tie wholesale transport and roaming through coercion;²⁹³ below-cost pricing of either transport or roaming services;²⁹⁴ in contract negotiations;²⁹⁵ and through deals offered to integrated

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found if the seller's pricing policy makes purchase of the two products together the only viable economic option. *United States v. Loew's Inc.*, 317 U.S. 38, 52 (1962).

²⁸⁵ ACS Wireless July 21, 2006 Comments/Petition at 13-14; Declaration of Robert Doucette filed on behalf of ACS Wireless, Inc. (July 21, 2004) ("Doucette July 21, 2006 Declaration") at 4-5 ¶ 18; ACS Wireless August 14, 2006 Comments at 1-2; ACS Wireless September 6, 2006 Comments at 3, 22; ACS Wireless December 4, 2006 Comments at 3, 22; MTA Wireless August 2, 2006 Comments at 2.

²⁸⁶ ACS Wireless July 21, 2006 Comments/Petition at 16-17; Doucette July 21, 2006 Declaration at 5 ¶ 19; ACS Wireless September 6, 2006 Comments at 4, 38; MTA Wireless August 2, 2006 Comments at 11.

²⁸⁷ ACS Wireless September 6, 2006 Comments at 4, 38; ACS Wireless December 4, 2006 Comments at 4, 6.

²⁸⁸ ACS Wireless July 21, 2006 Comments/Petition at 10-13, n.56; Doucette July 21, 2006 Declaration at 3 ¶¶ 11-12; MTA Wireless August 2, 2006 Comments at 3; Kenshalo August 2, 2006 Declaration at 1-2 ¶¶ 2-4; ACS Wireless September 6, 2006 Comments at 22; ACS Wireless December 4, 2006 Comments at 6.

²⁸⁹ ACS Wireless July 21, 2006 Comments/Petition at 12-13; Doucette July 21, 2006 Declaration at 3-4 ¶¶ 13-14; MTA Wireless August 2, 2006 Comments at 2-3; Kenshalo August 2, 2006 Declaration at 2 ¶ 5.

²⁹⁰ ACS Wireless July 21, 2006 Comments/Petition at 13-14; ACS Wireless August 14, 2006 Comments at 2.

²⁹¹ ACS Wireless July 21, 2006 Comments/Petition at 13.

²⁹² ACS Wireless July 21, 2006 Comments/Petition at 13; Doucette July 21, 2006 Declaration at 4-5 ¶ 18; ACS Wireless August 14, 2006 Comments at 2.

²⁹³ GCI could coerce carriers that require wholesale transport between Alaska and the Lower 48 to use GCI for roaming. ACS Wireless July 21, 2006 Comments/Petition at 13.

²⁹⁴ ACS Wireless July 21, 2006 Comments/Petition at 14; ACS Wireless August 14, 2006 Comments at 2; Doucette July 21, 2006 Declaration at 4-5 ¶ 18.

²⁹⁵ Doucette July 21, 2006 Declaration at 4-5 ¶ 18; ACS Wireless September 6, 2006 Comments at 22.

wireline and wireless carriers.²⁹⁶

100. ACS Wireless argues that provisions in the *Resale Agreement*, the *Letter of Intent*, and the *Operating Agreement* further support its allegation that, post-transaction, GCI is likely to tie transport and roaming. [REDACTED].²⁹⁷ [REDACTED]. Further, ACS Wireless argues that the *Operating Agreement* aligns GCI's and Alaska DigiTel's financial interests through the sharing of Alaska DigiTel's profits and losses and the consolidation of the two companies' financial statements, and that this consolidation would permit any losses from pricing one service below cost to be offset by gains from the other bundled services.²⁹⁸ ACS Wireless also argues that GCI has the ability to charge below-cost prices for transport services because Section 112 of Title I of Division J of the Consolidated Appropriations Act, 2005 does not affect GCI's prices for interstate special access services, and therefore GCI would have flexibility to offer below-cost transport pricing if it ties wholesale transport and roaming services.²⁹⁹

101. In addition, [REDACTED].³⁰⁰ [REDACTED].³⁰¹ [REDACTED].³⁰²

102. ACS Wireless requests the Commission consider barring GCI from tying wholesale transport and roaming.³⁰³ Further, ACS Wireless and MTA Wireless argue that the Commission should initiate a proceeding to reclassify GCI's cable landing licenses as common carrier licenses to prevent GCI from tying its wholesale transport and roaming services, based on changes in market circumstances since GCI obtained its submarine cable licenses, including increased demands for data transmission and redundancy.³⁰⁴ ACS Wireless and MTA Wireless argue that the Commission may change the regulatory status of GCI's non-common carrier licenses if it is in the public interest.³⁰⁵

103. The Applicants claim that ACS Wireless's arguments regarding the potential tying of wholesale transport and roaming services are speculative, and the Commission rejected a similar argument because it was based on "speculation and surmise."³⁰⁶ Further, the Applicants argue that they have no pricing flexibility on interstate wholesale switched service elements provided over GCI's undersea cables. The Applicants claim that they are bound by the statutory pricing mechanism set forth in

²⁹⁶ Doucette July 21, 2006 Declaration at 4-5 ¶ 18.

²⁹⁷ [REDACTED]

²⁹⁸ ACS Wireless September 6, 2006 Comments at 22-24.

²⁹⁹ ACS Wireless August 14, 2006 Comments at 2.

³⁰⁰ [REDACTED].

³⁰¹ [REDACTED].

³⁰² [REDACTED].

³⁰³ ACS Wireless September 6, 2006 Comments at 4, 38.

³⁰⁴ ACS Wireless July 21, 2006 Comments/Petition at 16-17; Doucette July 21, 2006 Declaration at 5 ¶ 19; ACS Wireless September 6, 2006 Comments at 4, 38; MTA Wireless August 2, 2006 Comments at 11.

³⁰⁵ ACS Wireless July 21, 2006 Comments/Petition at 16; MTA Wireless August 2, 2006 Comments at 11-12; ACS Wireless September 6, 2006 Comments at 38.

³⁰⁶ Applicants August 4, 2006 Joint Reply at 4; Applicants September 13, 2006 Joint Response at 24 (redacted version)(citing *Cable & Wireless, PLC*, 12 FCC Rcd 17669, 17683 (1997)). The Applicants also cite the *Cingular-AT&T Wireless Order* where the Commission found claims of harms to the roaming market to be unsupported speculation. See Applicants September 13, 2006 Joint Response at 25 (redacted version).

Section 112 of Title I of Division J of the Consolidated Appropriations Act, 2005, which codified the pricing for these service elements from the Alascom, Inc. Tariff FCC No. 11 and made the pricing applicable to GCI. The Applicants argue that ACS Wireless's request that the Commission reclassify GCI's cable landing licenses as common carrier has no place in this proceeding.³⁰⁷ Further, the Applicants argue that the International Bureau reviewed the competitive situation in the wholesale transport market and found that GCI's submarine cable should not be licensed as common carrier.³⁰⁸ The Applicants claim that the International Bureau's conclusions do not change as a result of this transaction, and because there are no transaction-specific effects on the transport market, the Commission should not consider these allegations. Further, the Commission has previously noted that it will not consider allegations that are not transaction-specific.³⁰⁹

104. We deny ACS Wireless's request that we condition our approval of this transaction on a bar against GCI's ability to tie wholesale transport service and roaming services.³¹⁰ Under some circumstances, the bundling or tying of two products or services may result in economic efficiencies, including consumer benefits and the lowering of production costs, although in other circumstances tying may result in competitive harms.³¹¹ We find, however, that ACS Wireless and MTA Wireless have failed to provide any evidence that this transaction increases the risk of tying transport and roaming services in the future, and as such their tying claims amount to unsupported speculation.³¹² In making these tying claims, neither ACS Wireless nor MTA Wireless have presented any specific allegations that GCI intends to tie the provision of wholesale transport service and roaming service in a manner that results in competitive harm.³¹³ Moreover, as discussed below, we find that adequate alternative capacity exists in the wholesale transport market to enable companies to purchase such capacity separate from roaming services.

105. We also deny the request to consider reclassification of the regulatory status of the Alaska United submarine cables at this time. ACS Wireless and MTA have not demonstrated that there is a reason to compel GCI to operate these cables on a common carrier basis.³¹⁴ The Commission maintains

³⁰⁷ Applicants August 4, 2006 Joint Reply at 4.

³⁰⁸ Applicants September 13, 2006 Joint Response at 23-24 (redacted version).

³⁰⁹ Applicants September 13, 2006 Joint Response at 24 (redacted version).

³¹⁰ ACS Wireless September 6, 2006 Comments at 4, 38.

³¹¹ See, e.g., Christian Ahlborn, David S. Evans, and A. Jorge Padilla, "The Antitrust Economics of Tying: A Farewell to Per Se Illegality," *The Antitrust Bulletin*, Spring-Summer 2004 at 318; *Jefferson Parish Hospital District No. 2 v. Edwin G. Hyde*, 466 U.S. 2 (1984) ("Jefferson Parish").

³¹² See *Cingular-AT&T Order*, 19 FCC Rcd at 21591 ¶ 181 (rejecting a claim by consumer protection groups that, post-merger, Cingular would have the ability and the incentive to exact discriminatory rates from roaming partners because the claim was based on unsupported speculation).

³¹³ For tying to be found illegal under the antitrust laws, courts look for the following factors at a minimum: (1) the tying and tied products or services are separate; (2) the firm effecting the tie has market power in the tying market; (3) the firm can use its market power in the tying market to "force" customers to purchase the tied product; and (4) the tying arrangement forecloses a substantial amount of interstate commerce. See, e.g., *Jefferson Parish* at 12-18. In most circumstances a court will then analyze the reasonableness of the effects of the tie, i.e., whether the economic, technological or competitive effects of tying the good or services outweighs the competitive harms. See *United States v. Microsoft Corp.*, 253 F.3d 34, 89-96 (D.C. Cir. 2001); *Jefferson Parish* at 29-32.

³¹⁴ See *In the Matter of Cable & Wireless, PLC, Application for a License to Land and Operate in the United States a Private Submarine Fiber Optic Cable Extending Between the United States and the United Kingdom*, File No. (continued....)

both non-common carrier and common carrier regulatory options for operating a submarine cable system.³¹⁵ In determining the regulatory status of a submarine cable, the Commission applies the two-part test set forth by the court in *NARUC I*.³¹⁶ The Commission generally has focused on the availability of alternative facilities in assessing whether to require that a submarine cable operate on a common carrier basis.³¹⁷ Here, as noted above, the Alaska Northstar submarine cable competes with GCI for traffic on the *Alaska-Pacific Northwest route. Fixed Satellite Service providers offer additional transport capacity.* In addition, Lower 48 traffic to Alaska may be able to transit Canadian facilities, as there is some common carrier terrestrial microwave capacity between Alaska and Canada.³¹⁸ Thus, we find that adequate alternative capacity exists and the claims of competitive harm are largely speculative.

106. Should MTA Wireless or ACS Wireless have evidence at some future date that the Alaska United cable system has become a potential bottleneck or that GCI has engaged in anticompetitive conduct in providing Alaska United cable capacity, it may ask the Commission to reconsider the regulatory status of the Alaska United cables separate from this proceeding. The Commission retains the ability to reclassify a submarine cable to common carrier status if the public interest requires that the facilities be offered to the public indifferently.³¹⁹

d. Predatory Pricing

107. ACS Wireless alleges that GCI through its relationship with Dobson and its control over Alaska DigiTel would provide it with the incentive and ability to deploy a predatory pricing strategy.³²⁰

(Continued from previous page)

SCL-96-005, *Cable Landing License*, FCC 97-204, 12 FCC Rcd 17669, 17683 ¶ 38 (1997) (declining to require common carrier treatment of the proposed submarine cable facility based on unsubstantiated discrimination concerns).

³¹⁵ See Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, *Report and Order*, 16 FCC Rcd 22167, 22202-03 ¶ 70 (2001).

³¹⁶ *Id.*; see also *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 642 (D.C. Cir. 1976) (*NARUC I*), cert. denied, 425 U.S. 992 (1976) (whether an entity holds itself out to serve the public indifferently or whether there is a public policy reason to require the entity to hold out indifferently).

³¹⁷ See *Alaska United East Order*, 12 FCC Rcd at 18297 ¶ 15 (authorizing Alaska United East as a non-common carrier cable), *Order on Review*, 16 FCC Rcd at 4315-16 ¶ 4.

³¹⁸ See, e.g., <<http://wireless2.fcc.gov/UlsApp/UlsSearch/searchLicense.jsp>> (Alascom's facilities with call signs WFY510, WGW718 and WBA894 provide transborder links into Canada).

³¹⁹ In the Matter of Review of Commission Consideration of Applications Under the Cable Landing License Act, *Report and Order*, 16 FCC Rcd 22167, 22203 ¶ 70 n.164 (2001) ("*Submarine Cable Report and Order*"); 47 C.F.R. § 1.767(g)(10). In authorizing the Alaska United East cable in 1997, the Commission explicitly noted that its decision to grant the cable landing license to GCI on a non-common carrier basis was predicated in part on the current and planned facility alternatives on the route. *Alaska United East Order*, 12 FCC Rcd at 18298 ¶ 20 (1997), *Order on Review*, 16 FCC Rcd at 4315 ¶ 4 (alleged lack of sufficient facility/service capacity on route proven wrong). The Commission stated that, should the Alaska United East cable become a potential bottleneck facility, or should concerns be raised about anticompetitive conduct, it could consider common carrier regulation. *Id.* Moreover, the Commission imposed a recordkeeping requirement on GCI to improve the Commission's ability to monitor for any anticompetitive activity on Alaska United East. That condition requires GCI to maintain complete records including the percentage of circuits conveyed on the cable, to whom capacity is sold, and on what terms and conditions capacity is conveyed. These records are to be made available to the Commission on request. *Alaska United East Order*, 12 FCC Rcd at 18302 ¶ 33, 18304 ¶ 40(5).

³²⁰ ACS Wireless September 6, 2006 Comments at 38.

Predatory pricing occurs when a firm first lowers its price to drive its rivals out of the market as well as to deter entry, and then raises its price once its rivals exit the market.³²¹ Generally, when a firm adopts a predatory pricing strategy it sets price below some measure of cost.³²² ACS Wireless claims that post-transaction, GCI may package Alaska DigiTel services in its bundles or otherwise offer GCI and Alaska DigiTel services jointly.³²³ ACS Wireless requests that the Commission bar GCI from offering any wireless services below its (GCI's) cost.³²⁴ For example when GCI resells Dobson or Alaska DigiTel services, ACS Wireless argues that the Commission must require GCI to charge a price that has a positive contribution margin net of all of its costs, both direct and allocated.³²⁵ Further, ACS Wireless argues that because GCI is a "passive investor" it should be prohibited from using intra-company (GCI-Alaska DigiTel) trades, in-kind payments, or eliminations in order to justify below-cost pricing.³²⁶

108. We conclude that we need not adopt such an unprecedented condition here. We are not persuaded that GCI and Alaska DigiTel would be able to engage in successful price predation. We find it unlikely that such a strategy would succeed since Dobson and ACS Wireless both have extensive network coverage and have more subscribers than GCI and Alaska DigiTel combined would have post-transaction.³²⁷ Post-transaction, if GCI and Alaska DigiTel were to attempt to engage in predatory pricing, it is highly unlikely that either carrier could maintain an artificially low price for a sufficient period of time to drive out either Dobson or ACS Wireless. Finally, neither the record nor our analysis of market conditions indicates that this transaction would likely provide GCI with the ability to engage in a long-term successful price predation strategy. Therefore, we deny ACS Wireless's request to impose a condition on the price GCI could charge for its bundled services post-transaction.

³²¹ See CARLTON & PERLOFF at 334-339, 739. *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13098-99 ¶ 126; *Deutsche Telecom-VoiceStream Wireless Order*, 16 FCC Rcd at 9828-30 ¶¶ 88-92. Finding it unlikely that predatory pricing would occur in the United States mobile telephony market. The Supreme Court explained in *Matsushita Electric Industrial Co. v. Zenith Radio Corp.* that "the success of such [predatory] schemes is inherently uncertain: the short-run loss is definite, but the long-run gain depends on successfully neutralizing the competition. Moreover it is not enough simply to achieve monopoly power, as monopoly pricing may breed quick entry by new competitors eager to share in excess profits. The success of any predatory scheme depends on maintaining monopoly power for long enough both to recoup the predators' losses and to harvest some additional gain.... For this reason, there is consensus among commentators that predatory pricing schemes are rarely tried, and even more rarely successful." See *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 589 (1986) (citing ROBERT BORK, *THE ANTITRUST PARADOX* 149-155 (1978)).

³²² See CARLTON & PERLOFF at 334-339, 739.

³²³ ACS Wireless September 6, 2006 Comments at 38.

³²⁴ ACS Wireless September 6, 2006 Comments at 4, 38.

³²⁵ These costs include general and administrative expenses, marketing, and handset subsidies. ACS Wireless September 6, 2006 Comments at 38-39.

³²⁶ ACS Wireless September 6, 2006 Comments at 39. In-kind trades would be equivalent to barter services. See ACS Wireless September 6, 2006 Comments at 39 n.138. Eliminations is an accounting procedure where one affiliate may eliminate expenses and/or revenues for reporting purposes when it provides a service to another affiliate. For example if GCI provides local transport service to Alaska DigiTel, then this should appear as revenue for GCI and as an expense for Alaska DigiTel in order to calculate "true costs". See ACS Wireless September 6, 2006 Comments at 39 n.139.

³²⁷ See paras. 76, *supra*.

C. Public Interest Benefits

109. In addition to assessing the potential competitive harms of the GCI-Alaska DigiTel-Denali transaction, we also consider whether the proposed transaction would be likely to generate verifiable, transaction-specific public interest benefits.³²⁸ In doing so, we ask whether, post-transaction, GCI and Alaska DigiTel would be able, and would be likely, to pursue business strategies resulting in demonstrable and verifiable benefits to consumers that could not be pursued but for the transaction.³²⁹

110. As discussed below, we find that the proposed transaction may result in certain transaction-specific public interest benefits. We recognize that many of these benefits may be challenging to achieve in the near future because of sizable technological and financial requirements. As a result, it is difficult for us to precisely quantify either the magnitude of or the time period in which these benefits will be realized. Further, the Applicants did not provide sufficient details and documentation of claimed benefits to enable us to arrive at a definitive conclusion regarding transaction-specific public interest benefits.

111. *Analytical Framework.* The Commission has recognized that efficiencies generated through a transaction or merger can mitigate competitive harms if such efficiencies enhance the combined entity's ability and incentive to compete and therefore result in lower prices, improved quality, enhanced service or new products.³³⁰ Under Commission precedent, the Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transaction outweigh the potential public interest harms.³³¹

112. There are several criteria the Commission applies in deciding whether a claimed benefit should be considered and weighed against potential harms. First, the claimed benefit must be transaction- or merger-specific. This means that the claimed benefit must be likely to be accomplished as a result of the proposed transaction or merger but unlikely to be realized by other means that entail fewer anticompetitive effects.³³² Second, the claimed benefit must be verifiable. Because much of the

³²⁸ See, e.g., *DoCoMo-Guam Cellular Order*, FCC 06-167 at 24 ¶ 39; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 39 ¶ 105; *SBC-AT&T Order*, 20 FCC Rcd at 18384 ¶ 182; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 193; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 129; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13100 ¶ 132; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

³²⁹ See, e.g., *DoCoMo-Guam Cellular Order*, FCC 06-167 at 24 ¶ 39; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 39 ¶ 105; *SBC-AT&T Order*, 20 FCC Rcd at 18384 ¶ 182; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 193; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 129; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13100 ¶ 132; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

³³⁰ See, e.g., *DoCoMo-Guam Cellular Order*, FCC 06-167 at 24-25 ¶ 41; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 39 ¶ 107; *SBC-AT&T Order*, 20 FCC Rcd at 18384 ¶ 183; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 194; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 129; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101 ¶ 135; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204; see also *DOJ/FTC Merger Guidelines* § 4.

³³¹ See, e.g., *DoCoMo-Guam Cellular Order*, FCC 06-167, at 24-25 ¶ 41; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 39 ¶ 107; *SBC-AT&T Order*, 20 FCC Rcd at 18384 ¶ 183; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 194; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 129; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101 ¶ 135; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204.

³³² *DoCoMo-Guam Cellular Order*, FCC 06-167 at 25 ¶ 42; *ALLTEL-Midwest Wireless Order*, 2006 WL FCC 06-146 at 39 ¶ 108; *SBC-AT&T Order*, 20 FCC Rcd at 18384 ¶ 184; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 195; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599-600 ¶ 205; accord *Application of EchoStar* (continued....)

information relating to the potential benefits of a merger is in the sole possession of the applicants involved in such a transaction, they are required to provide sufficient evidence supporting each claimed benefit so that the Commission can verify its likelihood and magnitude.³³³ In addition, as the Commission has noted, “the magnitude of benefits must be calculated net of the cost of achieving them.”³³⁴ Furthermore, as the Commission explained in the *ALLTEL-Midwest Wireless Order* and *Cingular-AT&T Wireless Order*, “benefits that are to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than predictions about events that are expected to occur closer to the present.”³³⁵ Third, the Commission has stated that it “will more likely find marginal cost reductions to be cognizable than reductions in fixed cost.”³³⁶ The Commission has justified this criterion on the ground that, in general, reductions in marginal cost are more likely to result in lower prices for consumers.³³⁷

113. Finally, the Commission applies a “sliding scale approach” to evaluating benefit claims.³³⁸ Under this sliding scale approach, where potential harms appear “both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we

(Continued from previous page)

Communications Corporation (A Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Transferors) and EchoStar Communications Corporation (A Delaware Corporation) (Transferee), CS Docket No. 01-348, *Hearing Designation Order*, 17 FCC Rcd 20559, 20630 ¶ 189 (2002) (“*EchoStar-DirectTV HDO*”); Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, *Memorandum Opinion and Order*, 12 FCC Rcd 19985, 20063-64 ¶ 158 (“Pro-competitive efficiencies include only those efficiencies that are merger-specific, i.e., that would not be achievable but for the proposed merger. Efficiencies that can be achieved through means less harmful to competition than the proposed merger . . . cannot be considered to be true pro-competitive benefits of the merger.”); Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, CC Docket No. 98-141, *Memorandum Opinion and Order*, 14 FCC Rcd 14712, 14825 ¶ 255 (“Public interest benefits also include any cost saving efficiencies arising from the merger if such efficiencies are achievable only as a result of the merger. . . .”). Cf. *DOJ/FTC Merger Guidelines* § 4.

³³³ See *DoCoMo-Guam Cellular Order*, FCC 06-167 at 25 ¶ 42; *ALLTEL-Midwest Wireless Order*, 2006 FCC 06-146 at 39 ¶ 108; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101-02 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

³³⁴ *DoCoMo-Guam Cellular Order*, FCC 06-167 at 25 ¶ 42; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 39 ¶ 108; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101-02 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

³³⁵ *DoCoMo-Guam Cellular Order*, FCC 06-167 at 25 ¶ 42; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 39 ¶ 108; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205 (citing *EchoStar-DirectTV HDO*, 17 FCC Rcd at 20630 ¶ 190).

³³⁶ *DoCoMo-Guam Cellular Order*, FCC 06-167 at 25 ¶ 42; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 39 ¶ 108; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205. See also *DOJ/FTC Merger Guidelines* § 4.

³³⁷ See *DoCoMo-Guam Cellular Order*, FCC 06-167 at 25 ¶ 42; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 39 ¶ 108; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 137; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206; see also *DOJ/FTC Merger Guidelines* § 4.

³³⁸ *DoCoMo-Guam Cellular Order*, FCC 06-167 at 26 ¶ 43; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 40 ¶ 109; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 137; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206.

would otherwise demand.”³³⁹ On the other hand, where potential harms appear less likely and less substantial, as in this case, we will accept a lesser showing to approve the transaction.³⁴⁰

114. *Discussion.* The Applicants assert that the assignment of Denali’s PCS license to Alaska DigiTel and the transfer of control of a 78-percent non-controlling interest in Alaska DigiTel to GCI will yield “significant public interest benefits.”³⁴¹ The Applicants state that the reorganization of Alaska DigiTel and GCI’s acquisition of a 78 percent ownership interest in Alaska DigiTel “will result in an infusion of capital into [Alaska DigiTel].”³⁴² The Applicants further state that these increased resources will allow Alaska DigiTel “to improve its services to the public and to compete more effectively against other large competitors in the market.”³⁴³ The Applicants also note that there will be continuity in the management of Alaska DigiTel and in the service provided to customers.³⁴⁴

115. In rebuttal to these claims, ACS Wireless notes that the capital infusion from GCI may create a stronger GCI/Alaska DigiTel combined entity aligned with Dobson that would concentrate spectrum and market power, thus harming rather than serving the public interest.³⁴⁵ Applicants respond that the capital infusion will enhance the ability of Alaska DigiTel to compete against the two most dominant wireless carriers in the market, ACS Wireless and Dobson Communications, and so the transaction is pro-competitive.³⁴⁶ Applicants also note that MTA Wireless argues in its September 7, 2006 Reply that Alaska “DigiTel will provide a vehicle for GCI to jumpstart its own state-wide system ... [and] to develop a facilities-based system.”³⁴⁷ This statement, the Applicants claim, contradicts the MTA Wireless argument that the proposed transaction would harm competition.

116. We find that the proposed transaction may result in the transaction-specific public interest benefits discussed above and result in the combined company being a more effective competitor. Although the Applicants did not provide sufficient details and documentation of claimed benefits to enable us to arrive at any conclusions, we accept a lesser showing to approve a transaction where potential harms appear less likely and less substantial. As discussed above, we find that this transaction would increase the potential for coordinated interaction based on various contracts entered into by and the

³³⁹ *DoCoMo-Guam Cellular Order*, FCC 06-167 at 26 ¶ 43; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 40 ¶ 109; *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 185; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 196; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 137; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206. Cf. *DOJ/FTC Merger Guidelines* § 4 (“The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.”).

³⁴⁰ See, e.g., *DoCoMo-Guam Cellular Order*, FCC 06-16, at 26 ¶ 43; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 40 ¶ 109; *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 185; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 195.

³⁴¹ Application Exhibit 1 at 4.

³⁴² *Id.*

³⁴³ *Id.*

³⁴⁴ See *id.*

³⁴⁵ ACS Wireless July 24, 2006 Comments/Petition at 15.

³⁴⁶ Applicants September 13, 2006 Joint Response at i.

³⁴⁷ *Id.* at 5.

corporate structure of GCI/Alaska DigiTel/Denali, and we have conditioned this order to ensure that such coordinated interaction does not occur.³⁴⁸ Further, besides the contractual issues that are resolved by the imposed conditions, we find that it is unlikely that this transaction would result in any potential harm. Thus, using the sliding-scale approach described above,³⁴⁹ we are able to conclude that this transaction is in the public interest.

V. CONDITIONS/REMEDIES

117. Using the analytical standards outlined above, we find that the Applicants' proposed transaction poses a risk of coordinated interaction.³⁵⁰ That is, certain provisions of the *Resale Agreement* between GCI and Dobson indicate that GCI's investment in Alaska DigiTel/Denali may provide the ability and incentive for coordinated interaction between Dobson and Alaska DigiTel. Under the *Resale Agreement*, GCI will have advance notice of competitively sensitive information about Dobson's pricing and service offerings, among other things, and could serve as the conduit for such information. The proposed relationship between GCI and Alaska DigiTel, as outlined by the *Operating Agreement* and *Management Agreement*, under which GCI occupies a position on Alaska DigiTel's Board of Managers, increases the opportunity for such competitively sensitive information to be conveyed between Alaska DigiTel, GCI, and Dobson, resulting in coordinated interaction among these service providers.

118. In its review of proposed transactions, the Commission is empowered to impose conditions to mitigate the harms the transaction would likely create, including coordinated interaction. Such conditions are tailored to address the specific harms anticipated based on economic analysis, examination of documents submitted in response to our inquiry, and public comment contained in the record of this proceeding.

119. Subsequent to the original filing of its applications GCI proposed certain conditions to guard against the transmission to Alaska DigiTel of competitively sensitive information received by GCI under its reseller arrangement with Dobson, and the transmission to Dobson of competitively sensitive information received by the GCI member of the Alaska DigiTel Board, following consummation of the proposed transaction.³⁵¹ These conditions consist of modifications to the *Resale Agreement* and the *Operating Agreement* between GCI and Dobson, to establish a definition for competitively sensitive information, and establish procedures and policies for the protection of such information. Among other things, the conditions provide that the GCI Relationship Officer appointed under the *Resale Agreement* shall be responsible for protecting the confidentiality of competitively sensitive information provided by Dobson to GCI. The GCI Relationship Officer is prohibited from serving as the GCI-appointed member of the Alaska DigiTel Board both during service as the Relationship Officer and for two years following such service; likewise, a former GCI-appointed Alaska DigiTel Board Member may not serve as the GCI Relationship Officer for two years following departure from the Board. In addition, reciprocal restrictions are established on the flow of competitively sensitive information regarding Dobson to Alaska DigiTel employees or representatives and on the flow of competitively sensitive information regarding Alaska DigiTel to Dobson employees or representatives. Finally, GCI will appoint a compliance officer to oversee its compliance with these conditions.

120. ACS Wireless and MTA Wireless contend that the conditions proposed by the Applicants

³⁴⁸ See para. 85, *supra*, and Part V, *infra*.

³⁴⁹ See para. 113, *supra*.

³⁵⁰ See paras. 82-85, *supra*.

³⁵¹ Applicants Proposed Conditions.

would not prevent coordination between Dobson and Alaska DigiTel.³⁵² ACS Wireless and MTA Wireless argue that GCI would still be able to use the competitively sensitive information from Dobson and Alaska DigiTel in an anticompetitive manner.³⁵³ Both ACS Wireless and MTA Wireless advocate that changes should be made to the conditions submitted by the Applicants. They state that the conditions should be expanded to include competitively sensitive information from all sources rather than just from the Board Member or Relationship Officer and that penalties should be detailed in the order.³⁵⁴ Further, ACS Wireless argues that the definition of "trade secrets" should include operation, marketing, and strategic business plans, and that the Commission should require that the Commission approve the compliance procedures and should require regular filings certifying compliance.³⁵⁵

121. The Applicants argue that their proposed conditions directly and effectively address the transmission of competitively sensitive information between Dobson and Alaska DigiTel through GCI.³⁵⁶ Further the Applicants argue that changes to the conditions proposed by ACS Wireless and MTA Wireless are overly broad and would interfere with normal day-to-day operations, and therefore would not serve the public interest.³⁵⁷

122. We adopt the Applicants' proposed conditions, with certain additions and clarifications, as fully set forth in Appendix A to this order. For example, we expand the scope of the conditions to cover any non-public information about Alaska DigiTel and Dobson obtained by any GCI employee, thus addressing the concerns ACS Wireless and MTA Wireless have expressed about non-public information being conveyed by GCI employees other than the GCI Relationship Officer and the Alaska DigiTel Board member. We decline to adopt other changes to the conditions proposed by ACS Wireless and MTA Wireless. We find that it is unnecessary to set forth specific penalties in the event of a violation, because any violation would constitute a violation of this order and would be subject to enforcement action. We also find that it is unnecessary to expand on the broad definition of trade secrets found in state law, which would, in general, includes all non-public information that has an "economic value."³⁵⁸ Further, we do not require the Applicants to seek approval of the compliance procedures or file regular certifications of compliance. If we suspect or are informed that the conditions adopted herein are not being implemented, we have the authority to request information regarding the implementation of these conditions.³⁵⁹

123. We conclude that these conditions mitigate the harm identified with this transaction³⁶⁰

³⁵² ACS Wireless December 4, 2006 Comments at 1-2; MTA Wireless December 4, 2006 Comments at 1-2.

³⁵³ ACS Wireless December 4, 2006 Comments at 2-3; MTA Wireless at 2 (arguing that GCI would need to be divided in half to prevent the flow of proprietary information between Dobson and Alaska DigiTel through GCI, and that this would be difficult to implement and enforce.

³⁵⁴ ACS Wireless December 4, 2006 Comments at 4; MTA Wireless December 4, 2006 Comments at 2.

³⁵⁵ ACS Wireless December 4, 2006 Comments at 4.

³⁵⁶ Applicants Joint Response December 6, 2006 at 5.

³⁵⁷ Applicants Joint Response December 6, 2006 at 5.

³⁵⁸ See ALASKA STAT. § 45.50.940(3), which defines "trade secret" as information that "(A) derives independent value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

³⁵⁹ See 47 U.S.C. § 308(b).

³⁶⁰ See paras. 82-85, *infra*.

and require that the appropriate agreements be amended in accordance with these conditions. Accordingly, with the conditions that we adopt in this order, and assuming the Applicants compliance with these conditions, we find that the Applicants have demonstrated that the proposed transaction would serve the public interest, convenience and necessity.

VI. CONCLUSION

124. We conclude that approval of this transaction, subject to the conditions set forth herein, is in the public interest. We deny MTA Wireless's petition to deny the applications or, in the alternative, order an evidentiary hearing because we do not find that the petition or the record raises substantial and material questions of fact. Finally, we deny, as moot, ACS Wireless's petition to intervene in an evidentiary hearing. We therefore grant the applications of Alaska DigiTel, Denali, and GCI, subject to the conditions specified in this Order.

VII. ORDERING CLAUSES

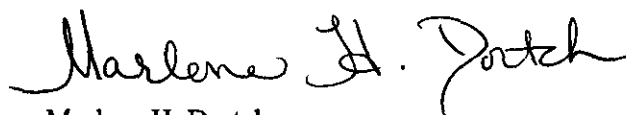
125. Accordingly, having reviewed the applications, the petitions, and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 309, 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the applications for the assignment of license from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C. and the transfer of control of a 78 percent ownership interest in Alaska DigiTel to GCI are GRANTED, to the extent specified in this order and subject to the conditions specified in Appendix A.

126. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petition to Deny the applications for the assignment of license from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C. and the transfer of control of a 78-percent non-controlling interest in Alaska DigiTel, L.L.C. to General Communication, Inc. filed by MTA Communications, Inc., d/b/a MTA Wireless is DENIED for the reasons stated herein.

127. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petition to Intervene filed by ACS Wireless is DISMISSED, for the reasons stated herein.

128. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of public notice of this Order.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

APPENDIX A

Conditions

The grants by the Commission of the Joint Applications³⁶¹ filed by Denali PCS, L.L.C. ("Denali"), Alaska DigiTel, L.L.C. ("Alaska DigiTel") and General Communication, Inc. ("GCI") are subject to the following conditions:

1. The Agreement entered into between GCI and Dobson Cellular Systems, Inc. ("Dobson") as of July 26, 2004 ("Reseller Agreement") and the concurrent letter of intent ("LOI") associated therewith shall be amended prior to the consummation of the transaction contemplated by the Joint Applications to provide that:
 - (a) Any Non-Public Competitively Sensitive Information, as defined in paragraph 7 herein (which definition shall be incorporated into the Reseller Agreement and the LOI), provided by Dobson to GCI shall be treated as "Confidential" by GCI.
 - (b) The role of the "Relationship Officer;" appointed by GCI pursuant to Section 8(a)(i) of the Reseller Agreement ("GCI Relationship Officer") shall be expanded to include responsibility for overseeing all aspects of the contractual relationship with Dobson. Any Non-Public Competitively Sensitive Information provided by Dobson to GCI shall be so designated to the GCI Relationship Officer by Dobson at the time of delivery so that the GCI Relationship Officer may take appropriate steps to protect the confidentiality of the Non-Public Competitively Sensitive Information.
2. The GCI Relationship Officer designated by GCI under the Reseller Agreement with Dobson shall not be the individual designated by GCI to serve on the Alaska DigiTel Board ("Alaska DigiTel Board Member").
 - (a) Once a GCI employee ceases serving as the GCI Relationship Officer, that employee shall not serve as the Alaska DigiTel Board Member designated by GCI for a period of at least two years.
 - (b) Once a GCI employee ceases serving as the Alaska DigiTel Board Member designated by GCI, that employee shall not serve as the GCI Relationship Officer for a period of at least two years.
3. Neither the GCI Relationship Officer, nor any GCI employee that becomes privy to any Non-Public Competitively Sensitive Information pertaining to Dobson shall provide, communicate, or convey in any manner such Non-Public Competitively Sensitive Information to any officer, director, employee or representative of Alaska DigiTel, including, without limitation, the individual designated by GCI to serve on the Alaska DigiTel Board.
4. Any officer, director, employee or representative of GCI who, by the nature of his or her duties,

³⁶¹ See Application to Assign Licenses Held by Denali PCS, L.L.C. to Alaska DigiTel, L.L.C., File No. 0002453582 (filed Jan. 27, 2006); Application to Transfer Control of Licenses Held by Alaska DigiTel, L.L.C., File No. 0002453706 (filed Jan. 27, 2006).

requires access to Non-Public Competitively Sensitive Information concerning both the Reseller Agreement and LOI, and the Alaska DigiTel investment shall not be permitted to be either the GCI Relationship Officer or Alaska DigiTel Board Member.

(a) Once a GCI officer, director, employee or representative has ceased to receive Non-Public Competitively Sensitive Information from Dobson for a period of two years, he or she may be permitted to be the Alaska DigiTel Board Member.

(b) Once a GCI officer, director, employee or representative has ceased to receive Non-Public Competitively Sensitive Information from Alaska DigiTel for a period of two years, he or she may be permitted to be the GCI Relationship Officer.

5. Any Non-Public Competitively Sensitive Information provided by Alaska DigiTel to the Alaska DigiTel Board Member shall be so designated to the Alaska DigiTel Board Member by Alaska DigiTel at the time of delivery so that the Alaska DigiTel Board Member may take appropriate steps to protect the confidentiality of the Non-Public Competitively Sensitive Information.

6. Neither the Alaska DigiTel Board Member designated by GCI, nor any GCI employee that becomes privy to any Non-Public Competitively Sensitive Information pertaining to Alaska DigiTel shall provide, communicate, or convey in any manner such Non-Public Competitively Sensitive Information to the GCI Relationship Officer or to any officer, director, employee or representative of Dobson.

7. For the purpose of these conditions, the term "Non-Public Competitively Sensitive Information" shall refer to any and all non-public information provided by Dobson to GCI pursuant to the Reseller Agreement or the LOI or by Alaska DigiTel to the Alaska DigiTel Board Member designated by GCI that, if released to a competitor, would allow the competitor to gain a significant advantage in the marketplace, such as (i) customer and subscriber data, (ii) customer proprietary network information (CPNI), (iii) rate and pricing data, (iv) trade secrets, (v) information pertaining to new product or service offerings, (vi) information pertaining to network changes, system coverage and technology selection, and (vii) information relating to the terms and conditions of service. Non-Public Competitively Sensitive Information pertaining to Dobson also shall include non-public information provided by Dobson to GCI pursuant to Sections 3(b)(v), 4(a)(i), 7(a)(i), 7(a)(iii), and 9(a)(i) of the Distribution Agreement and non-public information provided by Dobson to GCI with respect to the possible network enhancements and service enhancements referenced in the LOI.

8. GCI will appoint a compliance officer (the "Conditions Compliance Officer") to oversee GCI's compliance with the foregoing provisions. The Conditions Compliance Officer shall (i) communicate the nature and extent of the confidentiality restrictions to potentially affected GCI personnel along with the fact that GCI would consider any violation of the restrictions to be a serious matter that could result in disciplinary action or dismissal; (ii) act as a point of contact for GCI personnel who have information to report regarding a violation or possible violation of the foregoing provisions; (iii) review the appointments of the GCI Relationship Officer and the individual designated by GCI to serve on the Alaska DigiTel Board to ensure compliance with the foregoing provisions; (iv) investigate and act upon any known or reported violations of the foregoing provisions.

9. The Applicants will amend the Alaska DigiTel *Operating Agreement* to remove any veto rights of GCI with regard to the Alaska DigiTel budget.

10. These conditions will terminate if GCI terminates its relationship with Dobson, except for conditions 2(a), 3, 4(a), 7, 8, and 9, which will remain in effect.

APPENDIX B

Commenting Parties

ACS Wireless, Inc.
Alaska DigiTel, L.L.C.
Denali PCS, L.L.C.
General Communications, Inc.
MTA Wireless, Inc. d/b/a/ MTA Wireless

Petitioners

MTA Wireless, Inc. d/b/a/ MTA Wireless

**CONCURRING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Applications for the Assignment of License from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C. and the Transfer of Control of Interests in Alaska DigiTel, L.L.C. to General Communications, Inc.,*
(WT Docket No. 06-114)

We have an obligation in transactions coming before the Commission to weigh their proposed benefits against their potential harms to ensure that the transaction is in the public interest. For me, this particular transaction was a close call. There are benefits to this proposed transaction, specifically in making Alaska DigiTel a stronger competitor. In this regard, I also recognize and appreciate GCI's agreement to remove any veto rights over Alaska DigiTel's budget. At the same time, as the order points out, there is a real potential for post-transaction coordinated interaction among the applicants and through contracts with third parties. The Bureau should be commended for pointing out this concern and in crafting proposed conditions designed to remedy this potential harm. Ultimately, I would have preferred to have had stronger firewalls in place to help ensure that competitively sensitive information does not find its way into improper hands. As a result, I will concur in today's decision. Nevertheless, the Commission should keep a careful eye on future developments in the market and act swiftly in response to any evidence of anti-competitive or anti-consumer tactics. The good people of Alaska deserve no less.

**CONCURRING STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Applications for the Assignment of License from Denali PCS, LLC to Alaska DigiTel, LLC and the Transfer of Control of Interests in Alaska DigiTel, LLC to General Communications, Inc., (WT Docket No. 06-114)

This is a surprisingly complicated set of assignment and transfer of control applications. I cannot recall a transaction that implicates so many of the major communications providers in a market because of a variety of existing overlapping business arrangements and ventures.

I have tried to ask the hard questions regarding this transaction. I have explored the complicated relationships that GCI has with both Alaska DigiTel and Dobson. But it feels like we are leaving a stone unturned here – that there is more to the transaction that meets the eye. While I appreciate the several voluntary conditions advanced by the applicants, I am only able to concur in this transaction. I am concerned that GCI has such a close relationship with Dobson at the same time GCI is acquiring a 78 percent of Alaska DigiTel's membership interests, is receiving certain non-controlling investor protection rights, and has an option to acquire the remaining equity interest in Alaska DigiTel. And I am concerned that GCI has such a close relationship with Alaska DigiTel at the same time GCI has a distribution agreement with Dobson, is leasing PCS spectrum to Dobson pursuant to a long-term *de facto* transfer spectrum leasing arrangement, and has a Letter of Intent with Dobson to possibly pursue further strategic goals. Indeed our own item concludes that the proposed transaction poses a risk of coordinated interaction.

We rightly put in a place conditions regarding the GCI Relationship Officer and on the flow of competitively sensitive information regarding Alaska DigiTel to Dobson employees. These are important steps to limit the transfer of potentially damaging information. I hope they are enough. For the sake of Alaskans, I encourage the Commission to monitor this market carefully to make sure our conditions have the required effect of promoting a vibrant and competitive wireless marketplace.